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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,269	12/21/2001	Steven Craig Gehling	17,117	3066

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[REDACTED] EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 11/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/027,269	GEHLING ET AL.	
	Examiner	Art Unit	
	Dennis Ruhl	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 August 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-54 is/are pending in the application.

4a) Of the above claim(s) 11-13, 17-32, 36, 43, 46, 49, 52 and 54 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6, 8-10, 14-16, 33, 34, 38-42, 44, 45, 50, 51 and 53 is/are rejected.

7) Claim(s) 7, 35, 37, 47 and 48 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5,6</u> .	6) <input type="checkbox"/> Other: _____ .

1. Applicant's election without traverse of the species of claims 8-10,14,39-42,53 in Paper No. 6 is acknowledged.
2. The examiner notes that applicant has claimed priority to a provisional application and that the transmittal states that the priority claim is being made under 35 USC 120 and/or 35 USC 119(e). Applicant is requested to clarify for the record which statute is being relied upon for the priority claim. Is it a 120 or a 119(e) priority claim?
3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it reads like a claim and contains legal phraseology. Correction is required. See MPEP § 608.01(b).
5. Claim 51 is objected to because of the following informalities: The language "from distal end" should be amended to recite "from said distal end"; otherwise the claim does not read well. Appropriate correction is required.
6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 15,16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 15,16, it is not clear to the examiner whether the claims are directed to the absorbent device of claim 1 as the preamble indicates, or if the claims are drawn to a combination of the device of claim 1 with an applicator. Because claim 1 is reciting only the absorbent device, it is improper to recite the applicator in claims 15,16 because they are not part of the absorbent device. Claims 15 and 16 are drawn to a combination of the absorbent device and the applicator so either claim 1 needs to be amended to recite the combination or claims 15 and 16 need to be written in independent form indicating that the combination is being claimed. This is a combination/subcombination problem and renders the claims indefinite.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-6,8-10,14-16,33,34,39-42,44,45,50,51,53, are rejected under 35 U.S.C. 102(b) as being anticipated by Rubinstein (4286596).

With respect to claims 1-5,8,10,14,39,41,44,50,51,53, Rubinstein discloses an absorbent device that has a body 10, absorbent zone (upper part of 10 at or near 20a), application zone (area surrounding reservoir 30 and extending to 45b), and formulation 35. The application zone is adjacent the proximal end as claimed.

With respect to claim 6, the non-absorbent material is 45b.

With respect to claims 9,40, the reservoir is in fluid communication with the surface.

With respect to claims 15,16,42,45, see column 4, lines 17-23 where the claimed limitation is disclosed.

With respect to claims 33,34, these claims are reciting product by process limitations and only the end structure of the article will be given patentable weight. In this case the product by process claims do not define any further structure to the absorbent device because the limitation of "compressed" does not define anything about the end structure of the article. An article could be compressed to a given size or made to the given size and in both instances the end structure would be the same (the given size). The limitation concerning when the formulation is applied does not define anything to the end structure of the article. The prior art satisfies the claimed limitations because the end structure is found in Rubinstein.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rubinstein (4286596). Rubinstein discloses the invention substantially as claimed. Rubinstein does not disclose that the formulation includes a polymeric material (such as a viscosity agent, stabilizer, etc.). It is well known in the art that treatment formulations

includes polymeric materials and that the type of formulation used is dependent on the condition being treated. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Rubinstein with a formulation that has a polymeric material as is well known in the art.

12. Claims 7,35,37,47,48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mullan (3559646), Rusch et al. (6359191), Goldfarb et al. (3490454), Sgro (5840055), Peiler et al. (5273521 and 6036666), Olevsky (4374522), Glassman (4335720), Sneider (4318405), Dostal (3699965), and Olson et al. (3683912) disclose absorbent devices that have some kind of reservoir.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR
November 18, 2002



DENNIS RUHL
PRIMARY EXAMINER